



**OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS**

**BUREAU DU COMMISSAIRE
AUX DROITS DE L'HOMME**



Strasbourg, 4 May 2005

CommDH(2005)5
Original version

REPORT BY

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**ON HIS VISIT TO THE PRINCIPALITY OF
LIECHTENSTEIN**

8 - 10 DECEMBER 2004

**for the attention of the Committee of Ministers
and the Parliamentary Assembly**

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INTRODUCTION

In accordance with Article 3 e) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Mr Ernst Walch, the Liechtenstein Minister of Foreign Affairs, to pay an official visit to Liechtenstein on 8-10 December 2004. I was accompanied on my visit by Mr Javier Cabrera, Mr Lauri Sivonen and Mr Arnaud de Rugy, members of my office. I would like first of all to thank the Minister of Foreign Affairs for all the resources which his Ministry provided to ensure the success of my visit. I should also like to thank Ambassador Daniel Ospelt, the Permanent Representative of Liechtenstein to the Council of Europe, and his Deputy, Mr Patrick Ritter, for their invaluable help in preparing the visit and for accompanying me on the journey. Lastly, I would express my warm gratitude to the various Liechtenstein authorities for their openness and exemplary co-operation.

During the visit I held discussions with HSH Hereditary Prince Alois von und zu Liechtenstein, Mr Otmar Hasler, Prime Minister, Ms Rita Kieber-Beck, Deputy Prime Minister and Minister of Justice, Mr Alois Ospelt, Minister for the Interior and Mr Ernst Walch, Minister of Foreign Affairs. I also met a representative of the Office of Advice and Complaints, the Prosecutor General, Deputy Chief of the National Police, Head of the Criminal Investigation Police, Director of the Immigration and Passport Office, a representative of the Working Group for the National Action Plan against Racism, Vice President of the Constitutional Court, Director of the Office of Gender Equality, Director of the Office of Social Affairs, Director of the Office of Foreign Affairs, members of Liechtenstein delegations to the Parliamentary Assembly of the Council of Europe and the Parliamentary Assembly of OSCE, and the Liechtenstein member on the European Commission against Racism and Intolerance (ECRI). Furthermore, I held exchanges of views with representatives of civil society and visited the Vaduz Prison as well as the Reception Centre for Asylum Seekers in Vaduz. In this connection, I would like to thank the representatives of the NGOs, the Prison Director and the Director of the Reception Centre for their extremely forthcoming attitude.

GENERAL OBSERVATIONS

1. Liechtenstein has, for a long time already, taken an actively multilateral approach for protecting human rights. It joined the Organization for Security and Co-operation in Europe in 1975, the Council of Europe in 1978 and the United Nations in 1990. It is also member, since 1995, of the European Economic Area (EEA) and the World Trade Organization (WTO). Liechtenstein ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "ECHR") on 8 September 1982 going on to ratify Protocols Nos. 1, 4, 6, 7, 11 and 13. It has signed but not yet ratified the European Social Charter. However, Liechtenstein has ratified the International Covenants on Economic, Social and Cultural Rights (CESCR) as well as on Civil and Political Rights (CCPR) in 1999. As a final comment in this connection, I might suggest that Liechtenstein could complement its commitments in the fundamental rights field by ratifying the European Social Charter as well as Protocol No. 12 to the ECHR concerning the elimination of all kinds of discrimination.

2. The Constitutional Court of Liechtenstein has been entrusted with the task of protecting fundamental rights guaranteed by the Constitution and international treaties to which Liechtenstein is a party, including the ECHR. On human rights issues, the Constitutional Court can therefore always be appealed to as the final instance in Liechtenstein. This applies even to the judgments of the Administrative Court which is, since a recent change to the Constitution, otherwise the highest instance of appeal in cases involving the administration. The Constitutional Court also has jurisdiction to determine whether laws are in conformity with the Constitution and whether Government regulations are in conformity with the laws.
3. I am aware of the debate regarding the recent changes in Liechtenstein Constitution¹. In 2002, the Venice Commission issued an opinion² on the subject on the request of the Bureau of the Parliamentary Assembly of the Council of Europe and the Assembly is in the process of initiating a political dialogue with the Liechtenstein Diet on the topic. Due to the on-going involvement of the Parliamentary Assembly and since I deem it, as yet, premature to pronounce on any practical effects of the amended Constitution on the human rights situation in Liechtenstein, I will refrain from making further observations on this point in the present report.
4. This report focuses on certain areas and problems regarding human rights, identified during my visit, where further progress is still desirable such as some aspects of the place of foreigners, racism and discrimination, trafficking in human beings, the functioning of the police, prison and the courts, and the system of complaints. During my visit I gained the impression that the Liechtenstein authorities had a very open attitude to discussing the situation with regard to all these issues and would actively strive to identify the means of improving the situation in these fields.

I. THE PLACE OF FOREIGNERS IN LIECHTENSTEIN SOCIETY

A. The place of legally resident foreigners

5. Liechtenstein has 34 294 inhabitants, 34.4 % of whom are not Liechtenstein nationals.³ The majority of foreign inhabitants is composed of the Swiss (31 %), Austrians (17.3 %), Italians (10 %) and Germans (10 %) while the rest of the foreign population originates mainly from Turkey (7.5 %), Portugal (4.5%), Serbia and Montenegro (4.3 %), Spain (4 %), and Bosnia and Herzegovina (2.8 %). Furthermore, since 46.2 % of the total of 29 055 employees in Liechtenstein are foreign commuters (virtually all of them come from Austria, Switzerland and Germany) the total ratio of foreign

¹ The amended Constitution was published in the Official Journal of Liechtenstein on 15 September 2003.

² *Opinion on the amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein*, European Commission for Democracy through Law (Venice Commission), Opinion No. 227/2002.

³ The figures in this paragraph are based on the official statistics from 2003.

employees in Liechtenstein is as high as 65.7 %. This situation is explained by two specific features of the country. Firstly, Liechtenstein is an attractive country to work in, offering job opportunities for a number of people largely exceeding its current resident labour force, not to mention the number of Liechtenstein citizens – the rate of unemployment is currently at 2.2 %. The contribution of foreign workers to the Liechtenstein economy is therefore considerable. Secondly, the large foreign population is affected by the country's restrictive policy on citizenship including the prohibition of double nationality.⁴

1. Integration of foreigners and participation in public life

6. The Government of Liechtenstein has recently given a new impetus for integrating resident foreign nationals into Liechtenstein society through a series of roundtables between the Government and associations representing foreign residents and by setting up a special Working Group for promoting the integration of Muslims. Furthermore, the Government supports the Society for Intercultural Education (ViB) which offers German language courses for immigrants and organises exhibitions to make foreign cultures better known in Liechtenstein. The importance of knowing the language of the country as a key to integration is underlined by the Government and special German courses are also offered at school to children of foreign nationalities. Finally, the Government is in the process of establishing a new Office for the Equality of Opportunities (*Stabsstelle für Chancengleichheit*) which will, among its numerous other duties, have the brief to promote the integration of the foreign population.⁵
7. While I fully welcome these useful initiatives, further action can be taken for accomplishing successful integration. I would encourage the preparation of a national policy or action plan for the mutual integration process between nationals and non-nationals.⁶ According to some NGO representatives I met, the current provision of German courses did not yet sufficiently meet the needs of adult immigrants. Since learning German is indeed important for successful integration, improved language-learning opportunities would appear to me essential. Foreign women in particular should be encouraged to take part in German courses as they might find it more difficult to leave home for outside activities than men. The integration of foreigners should also be motivated by strengthening their participation in public life. The Government may wish to consider the establishment of a permanent national consultative body representing the foreign population and extending voting rights in municipal elections to foreign residents.

⁴ The prohibition of double nationality is not absolute. For example, children of parents with different nationalities can acquire both nationalities by birth and do not have to renounce either of them when reaching majority.

⁵ The Office for the Equality of Opportunities has already been established. See more about the Office below, chapter II.D.

⁶ I am aware of the efforts of the Working Group for the National Action Plan against Racism in this direction.

2. *Family reunification and citizenship legislation*

8. Family reunification for citizens from EEA countries and Switzerland can normally be made at any time while citizens of the other (“third”) countries face restrictions as to the time frame when family reunification can be applied for.⁷ The fact that financial guarantees and an adequate dwelling for all family members are also required may lead to de facto discrimination between men and women since women tend to be engaged in jobs where they earn less than men. I agree with the ECRI recommendation which requests the Liechtenstein authorities to take steps to ensure that the system of residence permits does not leave individuals in an unnecessarily precarious situation in these cases.⁸
9. The currently most popular route for naturalisation (116 cases in 2003) is governed by the Act on Facilitated Naturalisation of 12 April 2000. According to this procedure, thirty years’ of permanent residence is required for gaining citizenship, although time spent in Liechtenstein up to the age of twenty count double. Citizenship can also be acquired through marriage with a Liechtenstein citizen (35 cases) when the foreign spouse has been married at least three years along with twelve years of residence in Liechtenstein, the married years counting as double. Finally, it is possible to acquire citizenship through a vote in the municipality where the foreigner is resident after five years of residence in Liechtenstein (14 cases). It should be noted that in all these cases former citizenship has to be renounced unless it can be shown that it cannot be done.
10. The Facilitated Naturalisation Act has certainly given a new and useful way of acquiring Liechtenstein nationality for permanent foreign residents. However, the length of required residence seems to me excessive while the renunciation of former nationality places the threshold even higher. I would invite the Liechtenstein Government to reconsider these requirements. This is particularly important since the shorter route to naturalisation by a vote at the local level is discretionary and is not followed up by a statement of reasons to ground the decision nor a possibility for an appeal. As ECRI has noted⁹, such a procedure is not based on objective and measurable criteria and therefore leaves the way open for possible discriminatory effects. The fact that the overwhelming majority of foreign residents acquire their Liechtenstein citizenship through the Facilitated Naturalisation Act and not the potentially considerably speedier procedure of a vote in their local community would appear to lend further support to the concerns expressed by ECRI. Accordingly, I would urge the Liechtenstein authorities to review the discretionary procedure for granting citizenship in the light of its probable discriminatory effects.

⁷ Citizens of “third” countries can only apply for family reunification within two years after having received a residence permit with authorisation to work. Those who have received their residence permits due to family reunification or on humanitarian grounds have to fulfil the criterion of having regularly resided in Liechtenstein without interruption for four years before having the right to apply for family reunification within two years. The new Movement of Persons Ordinance (*Personenverkehrsverordnung*) entered into force in January 2005.

⁸ *Second Report on Liechtenstein*, ECRI, CRI (2003) 4.

⁹ ECRI, the report referred to above.

B. Treatment of asylum-seekers

11. In Liechtenstein, asylum procedure is under the competence of the Immigration and Passport Office while the Refugee Act dates from 1998.¹⁰ The number of asylum seekers has significantly declined from the peak of 613 in August 1999 to 67 in December 2004.¹¹ Since 1998, full refugee status has only been awarded in four cases although 124 asylum seekers have been granted residence permits on humanitarian grounds.
12. During their first year in Liechtenstein, asylum seekers are accommodated in a reception centre in Vaduz which is run by an NGO (*Flüchtlingshilfe Liechtenstein*) and funded by the Government. I visited the two-storey reception centre and found the facilities quite satisfactory for the ten residents of the time. The centre is an open one without restrictions of entry or exit. It provides legal counselling and German courses to its residents. Asylum seekers receive social benefits, have the right to work and their children attend regular schools. After their first year of residence, asylum seekers can move to live in flats in other municipalities if they are employed.¹²
13. Intention to apply for asylum has to be expressed within ten days of arrival in Liechtenstein and the time limit for holding the first interview with the Immigration and Passport Office is twenty days, although it is usually held sooner. A representative of the NGO running the reception centre participates in the hearing as an observer. I learned from my discussions at the reception centre that an NGO representative had not always been invited to attend subsequent hearings. I note that the Refugee Act (Article 29) extends corresponding procedural guarantees to additional hearings, including the presence of an NGO representative.¹³ I consider that the presence of an NGO representative during all hearings throughout the application process and even during the possible forced removal from the country at the end of a process is an important means of ensuring the adequate treatment of asylum seekers.

¹⁰ *Gesetz vom 2. April 1998 über die Aufnahme von Asylsuchenden und Schutzbedürftigen (Flüchtlingsgesetz).*

¹¹ In 2003, a total of 102 persons applied for asylum two of whom were unaccompanied minors. Unaccompanied minors are appointed temporary guardians by courts. The number of returns during the same year was 68.

¹² The earnings of asylum seekers are kept in a blocked account until their departure or granting of refugee status. The social welfare payments and a motivation premium of 3 CHF per every hour worked paid immediately are deducted from the blocked account before restitution. While I find it very useful that asylum seekers are authorised to work I urge the authorities to ensure that the conditions of their work including remuneration follow regular standards applied in Liechtenstein. Liechtenstein authorities have subsequently informed me that the conditions of work of asylum seekers fully complied with safety and other standards applicable for any other worker in Liechtenstein while their remuneration was the same as for other persons performing the same kind of work.

¹³ However, a Government Decree of 7 July 1998 specifies that under certain circumstances, related to the inadmissibility of the application, hearings with the presence of an NGO representative do not take place, for example, when the asylum seeker conceals his/her identity or knowingly gives a false identity.

14. First-instance decisions regarding refugee status usually take several months to be issued. Appeals from the decisions of the Government can be made to the Administrative Court and further to the Constitutional Court if the case concerns fundamental rights. Since full refugee status has so far only been awarded in four cases while a substantial number of residence permits have been granted on humanitarian grounds, the practice of granting asylum in Liechtenstein would appear to me very strict and potentially open to discrimination as regards the humanitarian grounds applied. I would also like to stress in this context the absolute, incontrovertible nature of the guarantees set out in Article 3 of ECHR, which prohibit the expulsion of a foreigner liable to be subjected to inhuman treatment or torture, even if he or she poses a threat to national security¹⁴. Finally, I would like to underline that where a forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights are respected at all stages.¹⁵

II. RACISM AND DISCRIMINATION

A. Racism

15. Since 2003, Liechtenstein has implemented a five-year Action Plan against Racism which was issued as a follow-up to the UN World Conference against Racism of 2001 (Durban) and the recommendations of ECRI.¹⁶ The Action Plan focuses on raising the awareness of public authorities, including the police, and the public, promoting the integration of foreign residents, collecting statistics and documenting racist incidents. A new article (283) on racial discrimination was introduced in the Penal Code in 2000. In 2003, four cases of racial discrimination were reported to the police of which one led to a sentence¹⁷ while in 2004 one case had been reported to the police with the process still pending. An Expert Group on Right-Wing Extremism was set up among the police in 1999 to monitor the situation and identify members of skinhead and similar groups in view of preventive measures. In 2004, six incidents of passing violence perpetrated by a group of young people with right-wing extremist outlook were reported to the Police.

¹⁴ See par. 80 of the judgment *Chahal vs. United Kingdom* (15 November 1996, Reports 1996-V) of the European Court of Human Rights. Liechtenstein authorities have subsequently informed me that there has not been any case in Liechtenstein where the authorities would have considered the expulsion of a foreigner because they deemed him or her to pose a threat to national security and that there have been no alleged violations of Article 3 of ECHR in Liechtenstein.

¹⁵ See also *Recommendation of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders*. CommDH/Rec(2001)1.

¹⁶ *Second Report on Liechtenstein*, ECRI, CRI (2003) 4. Liechtenstein became party to the International Convention on the Elimination of All forms of Racial Discrimination in 2000. A Working Group, composed of six representatives of national authorities, oversees the implementation of the Action Plan.

¹⁷ The sentence amounted to a fine of 500 CHF and 3 years' probationary period.

16. I welcome Liechtenstein's vigilance towards racism and right-wing extremism. In a country with an especially large foreign population it is particularly important to take proactive and continuous measures against such tendencies. During my discussions with Liechtenstein authorities, I discovered that the legislation against racial discrimination was interpreted in such a way that the wearing of symbols with racist connotations – for example an armband with a swastika – in public was not considered a punishable offence unless a clear propagandistic intent could be demonstrated.¹⁸ I would invite the Liechtenstein authorities to reconsider this issue since the unhindered open display of such symbols can already pass a message of certain tolerance towards racism while it is also deeply offensive to many people. Moreover, I urge the authorities to persevere in their efforts against racism and to ensure that the National Action Plan is adequately resourced to make a sustainable impact, and especially as regards raising awareness among young people.¹⁹

B. Gender equality and violence against women

17. The legal equality of men and women in Liechtenstein has been guaranteed by the Constitution since 1992 and, in 1996, Liechtenstein became party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Furthermore, an Office of Gender Equality was established in 1996 and a Gender Equality Act concerning, in particular, professional life entered into force in 1999. One violation of the Gender Equality Act has already been found by a court regarding the right to equal pay for equal work. Since 1998, Liechtenstein has implemented the Platform of Action of the Beijing Conference.²⁰ As another result of these developments, a great deal of Liechtenstein law has been reviewed and amended to become concordant with the equality legislation.²¹
18. Responses to violence against women have had an important part in the implementation of the Platform of Action in Liechtenstein. On 1 February 2001, new legislation entered into force granting wider protection to victims of domestic violence including barring orders to violent family members. Rape within marriage was also made a punishable offence albeit with the possibility of a number of attenuating grounds. The legislative changes have enabled the police to take a more proactive stance in intervening in cases of domestic violence. In 2004, the police intervened 29 times while 9 barring orders

¹⁸ The authorities also stressed that the interpretation of the law on this point (Penal Code, Article 283, 2), 2.) was not yet quite clear as it had so far not been applied by courts in practice. The original position of the Government when the law was debated in the Diet appears to have been somewhat stricter as it expressly refers to the harmful social effects of the open display of such symbols (*Stellungnahme der Regierung*, Nr. 142/1999).

¹⁹ I am aware of the important awareness raising work among young people conducted by the Office of Social Affairs in this context.

²⁰ Fourth World Conference on Women, Beijing, 1995.

²¹ In Liechtenstein, active and passive voting rights for women were introduced in 1984 at national level while already in 1976 at local level. In 1992, a parliamentary motion required the Government to submit to Diet all amendments to existing laws which had been made necessary because the provisions concerned were in contradiction to the principle of equality as enshrined in the Constitution. By the end of 1996 all necessary amendments had been adopted by the Diet. In 2001, Liechtenstein became State party to the Optional Protocol to CEDAW, accepting the competence of the Expert Committee to consider cases of alleged violations of the Convention.

were issued. In 22 cases the perpetrator was removed from home on a provisional basis. Furthermore, a refuge for women and children who are victims of violence has been opened in Liechtenstein while access to victim support has been improved. Awareness raising campaigns regarding violence against women have been conducted in Liechtenstein in co-ordination with neighbouring countries.

19. I acknowledge that substantial progress has been made by Liechtenstein in this field. It is essential to take a proactive stance in responding to violence against women and ensure durable progress by general measures favouring the equality of sexes. Although the NGO representatives I talked to confirmed that significant steps forward had been made, they pointed out that certain police officers might still not be sufficiently active in intervening in cases of domestic violence. I would like to suggest that further awareness raising may still be needed among the police while the recruitment of more women police officers for supporting women victims of violence could also help in this direction. NGO representatives also underlined that foreign spouses – usually women – were particularly vulnerable to domestic abuse when their residence status depended on their marital relationship.²² The Liechtenstein authorities assured me that the Government had issued a decision which enabled foreign spouses, who had been victims of proven domestic violence (physical, psychological or sexual), to continue their residence in Liechtenstein even after separation from their partners. Whilst I welcome this decision I recommend that it is given the force of law so that it is applied in an unequivocal manner.

C. Minority religions

20. In Liechtenstein, the majority of the population are Roman Catholics (76 %) while Protestants stand at 7 % and Muslims at 4.1 %.²³ During my visit, I learned that there is also about 1 % Orthodox Christians. While the Roman Catholic Church has the status of a state church by virtue of the Constitution, all religious groups enjoy tax-exempt status and are eligible for state subsidies. Schools offer classes in the Catholic and Protestant religions while others may take religious classes through correspondence. With respect to state subsidies to religious communities, I urge the Government to monitor the situation so as to ensure that communities representing minority religions are not discriminated against on procedural or other grounds.

D. Office for the Equality of Opportunities

21. While in Liechtenstein, I was informed of the Government's plans to set up a new Office and a Commission for promoting the equality of opportunities. The new Office – as well as the Commission – was subsequently established on the basis of the former Office of Gender Equality with a widened mandate and improved resources. The brief of the Office covers issues related to migration, integration of foreigners, education,

²² Usually five years' period of residence is required for foreign spouses to obtain a residence permit in their own right.

²³ The figures are given according to the official statistics of 2002. The Protestants are divided into Lutheran and reformed communities. There are two mosques in Liechtenstein.

housing, health, social security, disabilities, old age, religion and sexual orientation. The Office is aimed at providing a focal point for co-ordinating the work of different authorities against discrimination in all fields. I naturally welcome this new initiative to deal with discrimination in an integrated manner. However, it is imperative that the new Office should be given sufficient resources to enable it to carry out its broad mandate with adequate expertise. I also consider that the ratification by Liechtenstein of the Protocol No. 12 to the ECHR would give fresh impetus to the mission of the Office.

III. TRAFFICKING IN HUMAN BEINGS

22. Liechtenstein has 6 cabarets which are legally regarded as entertainment establishments and employ dancers almost exclusively from countries outside Switzerland and the EEA (“third countries”) on a temporary basis. The dancers are granted temporary residence permits as artists and usually spend one or two months in Liechtenstein and another six or seven months in Switzerland.²⁴ In these cases, the maximum validity of the temporary residence permit in Liechtenstein is six months per calendar year unlike most other temporary residence permits. Each cabaret has a quota to contract five dancers every month. The total of temporary residence permits granted under this procedure was 406 in 2004. About 60 % of the dancers are first comers while the rest of them, i.e. 40 %, regularly come back to Liechtenstein year after year.
23. The Government Guidelines of 19 December 2000 oblige the employers to provide a written guarantee to the effect that the dancers are covered by a health and accident insurance as a prerequisite for granting residence permits. Furthermore, the dancers must be over 18 years old, receive at least the minimum wage agreed for the hotel and restaurant industry and take part in an Aids-prevention project in the sex trade (*Projekt Aids-Prävention in Sexgewerbe*). However, it is forbidden that a work contract would include prostitution as any of the tasks of the dancer. It should also be noted in this context that while the Liechtenstein law in principle forbids all forms of prostitution, it in fact tolerates individual prostitutes if they do not offer their services in a manner giving rise to public offence.²⁵
24. I ascertained from my talks during the visit that the Liechtenstein authorities were well aware that the cabaret dancers often acted as prostitutes even if allegations of organised prostitution were always denied by the cabaret keepers supported by the dancers themselves during regular controls. I also learned that the guarantees for insurance cover had not always been respected and that it was difficult to verify whether the dancers were actually paid the minimum wage required since they were allegedly paid in cash.

²⁴ Dancers with temporary residence permits in Liechtenstein can only take up work after having spent at least one month in Switzerland: direct admission to Liechtenstein is not possible.

²⁵ This interpretation of the law is included in Article 210, paragraph 2), of the Penal Code; see also Articles 214-216.

25. A combination of reasons leads me to be concerned that these cabaret dancers may be exposed to a considerable risk of trafficking in human beings. Firstly, the women involved are officially recruited as cabaret dancers but are nevertheless usually expected to also work as prostitutes even when this is not stipulated in their work contracts. Secondly, they are normally citizens of countries with greatly inferior income levels to those of Liechtenstein and therefore may find themselves in a vulnerable position to refuse illegal demands by employers or other people. Thirdly, their residence permits are extraordinarily limited to six months even when they come back regularly during several years while it appears particularly difficult to monitor the respect of contractual obligations undertaken by the cabaret keepers under this scheme. All these reasons tend to render the women concerned dependent on their employers and agents and increase the risk of their falling into the hands of trafficking networks.
26. Trafficking in human beings is clearly prohibited by Liechtenstein law and I urge the authorities to be especially vigilant in monitoring the situation and ensuring that the system of temporary residence permits for cabaret dancers is not used for facilitating trafficking. Further, I would invite the Liechtenstein authorities to verify that the recently adopted changes to the Code of Criminal Procedure of 15 September 2004 regarding the protection of victims and witnesses and the current Government proposal for a law on victim support can be effectively applied in cases of trafficking in human beings. It is clear that active bilateral co-operation with Switzerland and multilateral co-operation with all European countries is necessary in this field.²⁶

IV. POLICE, PRISON AND JUSTICE

A. Access to a lawyer during detention

27. During my visit, I did not hear any allegations of police brutality or degrading treatment of persons deprived of their liberty in Liechtenstein. Nor do I have any specific remarks to make regarding the detention cells of the Vaduz Police Station I visited. However, I ascertained that persons detained by the police still did not have the right of access to a lawyer before they had acquired the status of an “accused person” – this status of a *beschuldigter* is acquired at the latest within 48 hours – despite repeated recommendations by the CPT.²⁷

²⁶ I am aware of Liechtenstein’s active participation in the current drafting process of the Council of Europe Convention on action against trafficking in human beings as well as the work against trafficking in human beings it supports in Ukraine in the framework of the OSCE.

²⁷ *Report to the Government of the Principality of Liechtenstein on the visit to Liechtenstein carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 2 June 1999.* CPT/Inf (2002) 33.

28. I consider that the right of access to a lawyer at the outset of detention is essential for protecting the rights of the detained person and ensuring the transparency of the treatment received in the hands of the police. There should be a possibility to exercise this right also during police interrogations as well as appearances before the investigating judge. There may be exceptional cases where access to a lawyer chosen by the detained person is not possible in the legitimate interests of the investigation, yet access to another, independent, lawyer should be granted even in these cases. The Liechtenstein authorities assured me that they intended to move towards reforming the Code of Criminal Procedure to meet this concern following the recent example of Austria.

B. Vaduz Prison

29. There is only one prison in Liechtenstein and it is situated adjacent to the Vaduz Police Station. The prison accommodates remand prisoners as well as convicted prisoners sentenced to terms of up to two years.²⁸ Prisoners sentenced to terms superior to two years are transferred to prisons in Austria following the terms of a treaty concluded between Liechtenstein and Austria. The material conditions of the prison I visited were quite satisfactory. Efforts had been made to improve the possibilities for activities for inmates both inside and in the outdoor area as a response to the recommendations of the CPT.²⁹ I also learned of plans to enlarge the prison to improve capacity and possibilities for activities in order to raise the current maximum term of two years to three years, although it had not yet been possible to make funds available for the enlargement.³⁰

C. Access to legal aid, interpreters and translations

30. Some NGO representatives I talked to pointed out that access to legal aid in Liechtenstein occasionally posed a problem while the availability of interpreters and translations to foreigners during court proceedings and detention was not always guaranteed. The Liechtenstein authorities assured me that legal aid for criminal cases as well as cases involving the state administration was regularly granted on needs-based criteria.³¹ As for interpreters, the authorities admitted that it was not always easy to find an authorised interpreter for every language although they stressed that the requirements concerning the presence of interpreters in court proceedings were nevertheless observed.

²⁸ In 2003, there had been a total of 186 prisoners in the Vaduz Prison. People in administrative detention are in principle placed in the cells of the Vaduz police station although in cases of overcrowding cells of the adjacent prison may also be used.

²⁹ CPT, the report referred to above.

³⁰ Funds for the enlargement of the prison had already once been granted by the Diet but this decision was subsequently overturned by a referendum.

³¹ In 2003, legal aid was granted in 163 cases, the total sum spent rising to CHF 1 493 195.

31. When visiting the Vaduz Prison, I learned that the prison regulations had not yet been translated into any foreign language despite a recommendation by the CPT.³² The authorities replied that the regulations were under revision and that they would be translated into several languages upon completion.³³ In the meanwhile, the rules were interpreted to foreign prisoners who did not understand German. Due to the exceptionally high number of foreigners present in Liechtenstein, I urge the authorities to carefully monitor the situation so that foreigners can, always when necessary, access interpreters and translations during court proceedings and detention.

V. COMPLAINTS PROCEDURES

32. Currently, there are several somewhat scattered ways of making complaints in Liechtenstein. In a formal way, complaints regarding the administration can be lodged at each authority with possibilities for appeal to the Government and the Administrative Court. There also exists an Office of Advice and Complaints within the Chancellery of the Government which can explain decisions of the authorities and, if needed, refer issues back to an authority concerned without a formal mandate. There also are commissions set by law for certain specific complaints.³⁴ Furthermore, the new Office for the Equality of Opportunities will most likely also be able to process complaints regarding discrimination. Finally, the authorities explained to me that the traditional approach of raising concerns in Liechtenstein was to go to see the highest competent authority in person.
33. The protection of individuals' rights requires efficient means of making complaints. I am convinced that the institution of the ombudsperson could provide a fundamental guarantee in this respect as well as an additional means for the Government to monitor the application of fundamental rights in the country. When the ombudsperson is conferred with a sufficiently wide mandate, all people, both citizens and foreign residents, can easily avail themselves of the institution in most fields when the need arises. The efficiency of the institution is also based on its independence and the formal powers of investigation and referral it is entrusted with. The Liechtenstein authorities pointed out to me that the creation of the Office for the Equality of Opportunities might well constitute a step towards establishing the institution of the ombudsperson. While I welcome this important step, I recommend that the Liechtenstein Government continues to give serious consideration for the creation of a full-fledged ombudsperson institution.

³² CPT, the report referred to above.

³³ On 28 December 2004 the Liechtenstein Ordinance on Prison Rules entered into force requiring, inter alia, that two information leaflets on the daily and cell orders of the prison are handed out to inmates. These leaflets have already been translated into seven languages.

³⁴ For example, The Commission for Complaints concerning Administrative Matters (*Beschwerdekommision für Verwaltungsangelegenheiten*) which is competent in the fields of construction industry, traffic, telecommunications and housing.

FINAL OBSERVATIONS AND RECOMMENDATIONS

34. Liechtenstein can be considered as a country committed to guaranteeing a high level of respect for human rights. This is demonstrated by the importance attached to the role of courts in defending fundamental rights. In order to assist the Liechtenstein authorities in their efforts to further promote the respect of fundamental rights, and in accordance with Article 8 of Resolution (99) 50, I would recommend the following measures:
- 1) prepare a national action plan for the integration of foreign residents, strengthen their possibilities for participating in public life and improve their opportunities for learning German;
 - 2) take steps to ensure that the practice of requiring financial and material guarantees as part of the procedure for granting the right to family reunification does not lead to the discrimination of women wishing to exercise this right;
 - 3) reconsider the length of residence requirements of the naturalisation procedures and review the discretionary procedure of granting citizenship by a vote of the local community in the light of its possible discriminatory effects;
 - 4) ensure the presence of an NGO representative during all hearings with asylum seekers and, as far as possible, during forced removals from the country;
 - 5) provide adequate resources for the implementation of the National Action Plan against Racism and, especially, as regards awareness raising among young people;
 - 6) persevere in efforts to improve equality between women and men as well as responses to violence against women; consider recruiting more women police officers and step up awareness raising among the police about the available means of dealing with domestic violence;
 - 7) give the force of law to the Government decision enabling foreign spouses, who have been victims of proven domestic violence, to continue their residence in Liechtenstein even after separation from their partners when their residence permits have been dependent on their marital relationship;
 - 8) ensure that minority religious communities are not discriminated against on procedural or other grounds when state subsidies are allocated to religious communities;
 - 9) review the system of temporary residence permits for cabaret dancers in order to prevent any risk of its being used for facilitating trafficking in human beings;

- 10) verify that the current and planned measures for the protection and support of victims and witnesses of crime can be effectively applied in cases of trafficking in human beings;
 - 11) grant people who have been detained the right to access a lawyer at the outset of their detention including during police interrogations and appearances before an investigating judge;
 - 12) ensure that foreigners can, always when necessary, access interpreters and translations during court proceedings and detention;
 - 13) give serious consideration for establishing the institution of ombudsperson;
 - 14) ratify the European Social Charter and Protocol 12 to the ECHR.
35. In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.

ANNEX TO THE REPORT

COMMENTS OF THE GOVERNMENT OF LIECHTENSTEIN

The Commissioner for Human Rights has decided to append to his report the following comments submitted by the Government of Liechtenstein when the report was presented to the Committee of Ministers of the Council of Europe on 4 May 2005.

COMMENTS BY THE LIECHTENSTEIN AUTHORITIES REGARDING THE REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS ON HIS VISIT TO THE PRINCIPALITY OF LIECHTENSTEIN

The Government of the Principality of Liechtenstein wishes to thank the Commissioner for Human Rights for his report and for the efforts he and his team have put into an objective appraisal of the human rights situation in Liechtenstein. The Government also wishes to thank for the messages of warm gratitude conveyed to the various authorities with which the Commissioner came into contact during his visit “for their openness and exemplary co-operation”.

The Liechtenstein authorities confirm, in line with the Commissioner's conclusions, their continuous commitment to guaranteeing a high level of respect for human rights and their readiness to actively strive to identify the means of further enhancing the situation, including with regard to the issues raised by the Commissioner in his report. To this end they intend to give all due consideration to the Commissioner's recommendations concerning certain matters.

The following comments of the Liechtenstein authorities on each of the recommendations are to be understood as a first reaction to the recommendations, setting out the specific context in which any future action to address the issues will have to be seen.

Recommendation 1

At the outcome of the second round table between the Head of Government and representatives of the foreigners' associations in December 2004, it was agreed that one of the main tasks assigned to the newly established Office for the Equality of Opportunities would be the elaboration of a blueprint for integration (Integrationsleitbild). For this purpose the Office would act as a platform to which the foreigners' associations may address their contributions and possible grievances. The blueprint for integration is expected to identify those policy areas

where priority action in the legislative and other fields is needed. It is also supposed to deal with the question of better involvement of foreign residents in public life as well as with the extension of the opportunities for and participation in German language courses, including through recommendations for the private sector.

Recommendation 2

The assessment of the financial and material guarantees carried out by the staff of the Immigration and Passport Office will take this recommendation into account. At the same time any positive discrimination, i.e. the deliberate favouring of requests for family reunification submitted by women, does not seem to be the right way to address any underlying problem of unequal pay for women and men.

Recommendation 3

The Act on Facilitated Naturalisation was adopted in 2000 by a popular referendum. The majority voting in favour of the act was very thin. Any liberalization of the current practice therefore needs to be thoroughly discussed and has to be seen against the background of one of the highest percentage of foreign population in the world. During the past ten years persons naturalized originated from Switzerland, Austria, Germany, Bosnia-Herzegovina, Croatia, Russia, Vietnam, Turkey, Slovenia, Italy and the United States of America. Practice has shown that a longer period of residence (than just the minimum of five years) as well as an active involvement in local sports or cultural activities help secure a positive result. Available statistics have confirmed that reasons for negative results may not simply be deducted from the fact the a person has a cultural background that may be less familiar to the local population.

Recommendation 4

Such presence has been granted on a regular basis, with only a few exceptions. Efforts will be made to further improve this record.

Recommendation 5

As in 2004, the working group has been allocated 25'000 Swiss francs for its activities in 2005. 10'000 Swiss francs will be used for the second year of the research assignment given to the "Liechtenstein Institute" in view of the elaboration of a scientific basis for the gathering of relevant data to measure forms and extent of discrimination. This has been identified as a priority area in the second report of ECRI. Awareness raising among young people is an activity that was given strong impetus by the Youth Campaign launched by the Council of Europe in 1995 and has been further developed and carried out ever since inside and outside Liechtenstein schools, with the Office for Education and the youth service of the Office for Social Affairs taking the lead respectively.

Recommendation 6

The new Office for the Equality of Opportunities will continue to be focussed for at least 50 % of its work on the improvement of gender equality. It will continue to pay particular attention to the issue of violence against women as well as to the awareness-raising for the need to overcome perceptions which distinguish between professions that are typical for women or men, including the work as police officer. As to the awareness-raising among the police about the available means of dealing with domestic violence, it goes without saying that the experience gained with the application of this recently adopted legislation will be taken into account when adopting such measures.

Recommendation 7

This recommendation will be considered in the framework of any future revision of the new Movement of Persons Ordinance which entered into force in January 2005. In the meantime the Government decision will continue to be applied by the competent authorities.

Recommendation 8

The issue of state subsidies to religious communities forms an integral part of the ongoing efforts to find the widest possible consensus on the redefinition of the relationship between the State and the Catholic Church. Discussions encompass the question whether in future funding should continue to come from the general budget, as decided by Parliament, or if it should be secured through a direct “tithe” paid in connection with religious affiliation.

Recommendation 9

Strict monitoring of the application of the Government Guidelines will continue to constitute one of the priority areas for preventive action, including regular control of the guarantees for insurance cover and for wage payment. Any changes in the regime for temporary residence permits will have to be based on the principles applied for any other temporary residence permits, i.e. the requirement of a valid work contract.

Recommendation 10

A working group has been established to identify the practical measures needed to implement the planned Act on Victim Assistance. It is composed of representatives of competent authorities as well as of NGOs which are active in the field of victim assistance, such as the women’s shelter. As is the case in other areas of assistance, these arrangements will also take into account existing structures in the adjacent regions of Switzerland and Austria, including those which have been set up to address the specific needs of victims of trafficking.

Recommendation 11

In December 2004 the Chief of Police issued an internal instruction according to which persons who are being interrogated and/or detained by the police have to be granted, upon their request, access to a lawyer. This instruction is binding for all staff of the police as well as of the prison. Violations are subject to disciplinary sanctions. The issue of the presence of a lawyer during the first appearance before the investigating judge will be addressed in the planned revision of the Code of Criminal Procedure, based on similar steps taken in Austria. The revision is one of the priorities of the Ministry of Justice during the new legislative period.

Recommendation 12

This recommendation can be implemented without delay since it reflects the current law and practice as applied by the competent authorities on the basis of available services.

Recommendation 13

It is foreseen to assess, after a reasonable period of time, the experience gained by all stakeholders with the new Office for the Equality of Opportunities. The findings of this evaluation will constitute an important element for such consideration. Additional input will be obtained through the examination of existing institutions in other countries with a population of similar structure and size as Liechtenstein.

Recommendation 14

As regards the issue of ratification of the European Social Charter, the Liechtenstein authorities are currently awaiting the outcome of the assessment of the implementation of the International Covenant for Economic, Social and Cultural Rights. It is hoped that the assessment will give a clear indication as to state of protection of these rights in Liechtenstein, in addition to the evaluations carried out in the framework of Liechtenstein's membership of the European Economic Area. In the meantime, the handling of the workload linked to the reporting requirements under the Charter by other countries will be closely observed. Experience gained with the individual complaint procedure under the International Convention for the Elimination of all Forms of Racial Discrimination as well as from the work of the Office for the Equality of Opportunities will, on its part, help define any need for further action in view of the ratification and implementation of Protocol 12 to the ECHR.